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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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David M. Berezowski

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08/22/2006

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EXAMINER

SHANG, ANNAN Q

ART UNIT

PAPER NUMBER

2623

DATE MAILED: 08/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/823,705	<b>Applicant(s)</b> BEREZOWSKI ET AL.	
	<b>Examiner</b> Annan Q. Shang	<b>Art Unit</b> 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**Continuation of Disposition of Claims:** Claims pending in the application are 1-6,8-11,13-46,50-56,58,60-85,87-90,92-125,129-135,137,139-164,166-169,171-204,208-214,216 and 218-237.

**Continuation of Disposition of Claims:** Claims rejected are 1-6,8-11,13-46,50-56,58,60-85,87-90,92-125,129-135,137,139-164,166-169,171-204,208-214,216 and 218-237.

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/08/06 has been entered.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-6, 9-11, 13-46, 50-56, 60-85, 88-90, 92-135, 139-164, 167-169, 171-204, 208-214, 218-237 are rejected under 35 U.S.C. 102(e) as being anticipated by **Maissel et al (6,637,029)** previously cited.

As to claims 1, 29 and 51, note the **Maissel** reference discloses figures 1-2 and 9, discloses an intelligent electronic program guide (EPG) and further discloses a

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method: for measuring audience information based on playbacks of a recorded program, for providing audience information with program listings in an interactive television application, for measuring audience information for upcoming program in an interactive application, comprising,

A user input device (Remote Control, col.10, lines 54-62); A display device (Television, col.9, lines 59-col.10, line 21);

Receiving indications (Headend 'HE' 340) of playbacks of the recorded program from a plurality of audience members (figs.1, 8, 9, col.18, lines 29-66 and col.19, lines 1-23);

Updating (HE-340) audience size information for the recorded program in response to receiving the indications from the plurality of audience members, where the calculating audience size information for a program corresponding to at least one of the one or more listings, where the calculating is based on a graded approach of assigning a predetermined quantity of points to each of a plurality of actions performed by a plurality of audience members (col.19, lines 16-49 and line 58-col.20, line 1+); and providing the providing the updated audience size information to at least one user within an interactive television application (col.19, lines 16-49 and line 58-col.20, line 1+), note that the HE processes and analysis on real time basis information on a proportion or percentage of audiences viewing a particular program such as NVOD, MOVIE, etc., and transmits information in real-time to subscribers upon receiving and indications from the subscriber(s) as to the playback of recorded program.

As to claim 2, Maissel further discloses where the recorded program is audio program (col.10, lines 23-66, col.11, lines 8-64 and col.21, lines 34-64).

As to claim 3, Maissel further discloses where the recorded program is television program (col.10, lines 23-62 and col.11, lines 8-64).

As to claim 4, Maissel further discloses where the recorded program is PPV program (col.10, lines 23-62, col.11, lines 8-64 and col.19, lines 1-15).

As to claim 5, Maissel further discloses where the recorded program is VOD program (col.10, lines 23-62, col.11, lines 8-64 and col.19, lines 1-15).

As to claim 6, Maissel further discloses where the recorded program is NVOD program (col.10, lines 23-62, col.11, lines 8-64 and col.19, lines 1-15).

As to claim 9, Maissel further discloses updating audience information based on the number of times a user played back the recorded program (col.11, lines 8-64 and col.19, lines 1-49)

As to claims 10 and 11, Maissel further discloses receiving an indication for a user interactions where such action controls how the how the recorded program is played back, executing the user's interactions in response to receiving the request and updating audience information based on the user's interactions comprises actions such as record and play, watched programs, purchased programs, etc., (col.11, lines 8-64, col.16, lines 26-63, col.18, lines 35-67 and col.19, line 9-col.20, line 59).

As to claim 13, Maissel further discloses where the ITV application is an ITV program guide (col.18, lines 35-67 and col.19, line 9-col.20, line 59).

As to claim 14, Maissel further discloses providing an interactive indicator that notifies the user when the audience information is available, where the interactive indicator comprises content selected from text, graphics, audio, video and animation (col.18, lines 35-67 and col.19, line 9-col.20, line 59).

As to claim 15, Maissel further discloses allowing the user to compare programs based on audience information distributed to the user for the programs (col.18, lines 35-67 and col.19, line 9-col.20, line 59).

As to claim 16, Maissel further discloses providing the audience information for a portion of the recorded program (col.18, lines 35-67 and col.19, line 9-col.20, line 59).

As to claim 17, Maissel further discloses where the portion is a scene within the recorded program (col.18, lines 35-67 and col.19, line 9-col.20, line 59)

As to claim 18, Maissel further discloses providing the audience information for genre of programs (col.18, lines 35-67 and col.19, line 9-col.20, line 59).

As to claim 19, Maissel further discloses providing the audience information for the recorded program based on a time slot (col.18, lines 35-67 and col.19, line 9-col.20, line 59).

As to claim 20, Maissel further discloses distributing audience information to a plurality of users and audience information for a subset of plurality of users to the user (col.18, lines 35-67 and col.19, line 9-col.20, line 59).

As to claim 21, Maissel further discloses where the subset of plurality of users is defined on user demographics (col.18, lines 35-67 and col.19, line 9-col.20, line 59).

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As to claims 22-23, Maissel further teaches monitoring the users action on flip display or channel change and browsing display of surfing (col. 16, lines 26-36 and col. 17, lines 17-50).

As to claim 24, Maissel further discloses providing the audience information to the user in program listings display (col.18, lines 35-67 and col.19, line 9-col.20, line 59).

As to claim 25, Maissel further discloses updating the audience information based on a user profile of a user from which the indication was received related to the playback of the recorded program (col.18, lines 35-67 and col.19, line 9-col.20, line 59).

As to claim 26-28, Maissel further discloses calculating audience size for the recorded program, based on weightings to playback information and accessing a table of grading information for assigning points to playback information (col.18, lines 35-67 and col.19, line 9-col.20, line 59).

Claim 30 is met as previously discussed with respect to claim 2.

Claim 31 is met as previously discussed with respect to claim 3.

Claim 32 is met as previously discussed with respect to claim 4.

Claim 33 is met as previously discussed with respect to claim 5.

Claim 34 is met as previously discussed with respect to claim 6.

Claim 35 is met as previously discussed with respect to claim 14.

Claim 36 is met as previously discussed with respect to claim 15.

Claim 37 is met as previously discussed with respect to claim 16.

Claim 38 is met as previously discussed with respect to claim 17.



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Claim 39 is met as previously discussed with respect to claim 18.

Claim 40 is met as previously discussed with respect to claim 19.

Claim 41 is met as previously discussed with respect to claim 20.

Claim 42 is met as previously discussed with respect to claim 21.

Claims 43-44 are met as previously discussed with respect to claims 22-23.

Claim 45 is met as previously discussed with respect to claim 24.

Claim 46 is met as previously discussed with respect to claim 25.

Claim 50 is met as previously discussed with respect to claim 13.

Claim 51 is met as previously discussed with respect to claim 2.

Claim 52 is met as previously discussed with respect to claim 2.

Claim 53 is met as previously discussed with respect to claim 3.

Claim 54 is met as previously discussed with respect to claim 4.

Claim 55 is met as previously discussed with respect to claim 5.

Claim 56 is met as previously discussed with respect to claim 6.

Claim 60 is met as previously discussed with respect to claim 14.

Claim 62 is met as previously discussed with respect to claim 15.

Claim 63 is met as previously discussed with respect to claim 16.

Claim 64 is met as previously discussed with respect to claim 17.

Claim 65 is met as previously discussed with respect to claim 19.

Claim 66 is met as previously discussed with respect to claim 20.

Claim 67 is met as previously discussed with respect to claim 21.

Claims 68-69 are met as previously discussed with respect to claims 22-23.

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Claim 70 is met as previously discussed with respect to claim 24.

Claim 71 is met as previously discussed with respect to claim 9.

Claim 72 is met as previously discussed with respect to claims 10-11.

Claim 73 is met as previously discussed with respect to claims 10-11.

Claim 74 is met as previously discussed with respect to claims 10-11.

Claim 75 is met as previously discussed with respect to claims 10-11.

Claim 76 is met as previously discussed with respect to claims 10-11.

Claims 77-79 are met as previously discussed with respect to claims 26-28.

As to claims 80, 108, 130, 159, 187 and 209, Maissel further discloses "a system: for measuring audience information based on playbacks of a recorded program, for providing audience information with program listings in an interactive television application, for measuring audience information for upcoming program in an interactive application..." as previously discussed with respect to the rejection of claim 1.

Claim 81 is met as previously discussed with respect to claim 2.

Claim 82 is met as previously discussed with respect to claim 3.

Claim 83 is met as previously discussed with respect to claim 4.

Claim 84 is met as previously discussed with respect to claim 5.

Claim 85 is met as previously discussed with respect to claim 6.

Claim 88 is met as previously discussed with respect to claim 9.

Claim 89 is met as previously discussed with respect to claim 10.

Claim 90 is met as previously discussed with respect to claim 11.

Claim 92 is met as previously discussed with respect to claim 13.

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Claim 93 is met as previously discussed with respect to claim 14.

Claim 94 is met as previously discussed with respect to claim 15.

Claim 95 is met as previously discussed with respect to claim 16.

Claim 96 is met as previously discussed with respect to claim 17.

Claim 97 is met as previously discussed with respect to claim 18

Claim 98 is met as previously discussed with respect to claim 19.

Claim 99 is met as previously discussed with respect to claim 20.

Claim 100 is met as previously discussed with respect to claim 21.

Claims 101-102 are met as previously discussed with respect to claims 22-23.

Claim 103 is met as previously discussed with respect to claim 24.

Claim 104 is met as previously discussed with respect to claim 25.

Claims 105-107 are met as previously discussed with respect to claims 26-28.

Claim 109 is met as previously discussed with respect to claim 2.

Claim 110 is met as previously discussed with respect to claim 3.

Claim 111 is met as previously discussed with respect to claim 4.

Claim 112 is met as previously discussed with respect to claim 5.

Claim 113 is met as previously discussed with respect to claim 6.

Claim 114 is met as previously discussed with respect to claim 14.

Claim 115 is met as previously discussed with respect to claim 15.

Claim 116 is met as previously discussed with respect to claim 16.

Claim 117 is met as previously discussed with respect to claim 17.

Claim 118 is met as previously discussed with respect to claim 18.

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Claim 119 is met as previously discussed with respect to claim 19.

Claim 120 is met as previously discussed with respect to claim 20.

Claim 121 is met as previously discussed with respect to claim 21.

Claim 124 is met as previously discussed with respect to claim 24.

Claim 125 is met as previously discussed with respect to claim 25.

Claim 129 is met as previously discussed with respect to claims 13.

Claim 131 is met as previously discussed with respect to claim 2.

Claim 132 is met as previously discussed with respect to claim 3.

Claim 133 is met as previously discussed with respect to claim 4.

Claim 134 is met as previously discussed with respect to claim 5.

Claim 135 is met as previously discussed with respect to claim 6.

Claim 139 is met as previously discussed with respect to claim 14.

Claim 140 is met as previously discussed with respect to claim 15.

Claim 141 is met as previously discussed with respect to claim 16.

Claim 142 is met as previously discussed with respect to claim 17.

Claim 143 is met as previously discussed with respect to claim 18.

Claim 144 is met as previously discussed with respect to claim 19.

Claim 145 is met as previously discussed with respect to claim 20.

Claim 146 is met as previously discussed with respect to claim 21.

Claims 147-148 are met as previously discussed with respect to claims 22-23.

Claim 149 is met as previously discussed with respect to claim 24.

Claim 150 is met as previously discussed with respect to claims 10-11.

Claim 151 is met as previously discussed with respect to claims 10-11.

Claim 152 is met as previously discussed with respect to claims 10-11.

Claim 153 is met as previously discussed with respect to claims 10-11.

Claim 154 is met as previously discussed with respect to claims 10-11.

Claim 155 is met as previously discussed with respect to claim 25.

Claims 156-158 are met as previously discussed with respect to claims 26-28.

Claim 160 is met as previously discussed with respect to claim 2.

Claim 161 is met as previously discussed with respect to claim 3.

Claim 162 is met as previously discussed with respect to claim 4.

Claim 163 is met as previously discussed with respect to claim 5.

Claim 164 is met as previously discussed with respect to claim 6.

Claim 167 is met as previously discussed with respect to claim 9.

Claim 168 is met as previously discussed with respect to claim 10.

Claim 169 is met as previously discussed with respect to claim 11.

Claim 171 is met as previously discussed with respect to claim 13.

Claim 172 is met as previously discussed with respect to claim 14.

Claim 173 is met as previously discussed with respect to claim 15.

Claim 174 is met as previously discussed with respect to claim 16.

Claim 175 is met as previously discussed with respect to claim 17.

Claim 176 is met as previously discussed with respect to claim 18.

Claim 177 is met as previously discussed with respect to claim 19.

Claim 178 is met as previously discussed with respect to claim 20.

Claim 179 is met as previously discussed with respect to claim 21.

Claims 180-181 are met as previously discussed with respect to claims 22-23.

Claim 182 is met as previously discussed with respect to claim 24.

Claim 183 is met as previously discussed with respect to claim 25.

Claims 184-186 are met as previously discussed with respect to claims 26-28.

Claim 188 is met as previously discussed with respect to claim 2.

Claim 189 is met as previously discussed with respect to claim 3.

Claim 190 is met as previously discussed with respect to claim 4.

Claim 191 is met as previously discussed with respect to claim 5.

Claim 192 is met as previously discussed with respect to claim 6.

Claim 193 is met as previously discussed with respect to claim 14.

Claim 194 is met as previously discussed with respect to claim 15.

Claim 195 is met as previously discussed with respect to claim 16.

Claim 196 is met as previously discussed with respect to claim 17.

Claim 197 is met as previously discussed with respect to claim 18.

Claim 198 is met as previously discussed with respect to claim 19.

Claim 199 is met as previously discussed with respect to claim 20.

Claim 200 is met as previously discussed with respect to claim 21.

Claims 201-202 are met as previously discussed with respect to claims 22-23.

Claim 203 is met as previously discussed with respect to claim 24.

Claim 204 is met as previously discussed with respect to claim 25.

Claim 208 is met as previously discussed with respect to claims 13.

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Claim 210 is met as previously discussed with respect to claim 2.

Claim 211 is met as previously discussed with respect to claim 3.

Claim 212 is met as previously discussed with respect to claim 4.

Claim 213 is met as previously discussed with respect to claim 5.

Claim 214 is met as previously discussed with respect to claim 6

Claim 218 is met as previously discussed with respect to claim 14.

Claim 219 is met as previously discussed with respect to claim 15.

Claim 220 is met as previously discussed with respect to claim 16.

Claim 221 is met as previously discussed with respect to claim 17.

Claim 222 is met as previously discussed with respect to claim 18.

Claim 223 is met as previously discussed with respect to claim 19.

Claim 224 is met as previously discussed with respect to claim 20.

Claim 225 is met as previously discussed with respect to claim 21.

Claims 226-227 are met as previously discussed with respect to claims 22-23.

Claim 228 is met as previously discussed with respect to claim 24.

Claim 229 is met as previously discussed with respect to claims 10-11.

Claim 230 is met as previously discussed with respect to claims 10-11.

Claim 231 is met as previously discussed with respect to claims 10-11.

Claim 232 is met as previously discussed with respect to claims 10-11.

Claim 233 is met as previously discussed with respect to claims 10-11.

Claim 234 is met as previously discussed with respect to claim 25.

Claims 235-237 are met as previously discussed with respect to claims 26-28.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 8, 58, 87, 137, 166 and 216 rejected under 35 U.S.C. 103(a) as being unpatentable over **Maissel et al (6,637,029)** as applied to claims 1, 51, 80, 130, 159 and 209 above and in view of **Hendricks et al (6,539,548)**.

As to claims 8, 58, 87, 137, 166 and 216, Maissel fails to explicitly teach updating market share of the recorded programs.

However, note **Hendricks** teaches analyzing rating for television shows to determine the appropriate schedule or program lineup to gain market share and revenue from advertising.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of Hendricks into the system Maissel to provide interesting programs to users, to gain a higher market share than other competitors.

***Response to Arguments***

6. Applicant's arguments with respect to claims 1-6, 8-11, 13-46, 50-56, 58, 60-85, 87-90, 92-125, 129-135, 137, 139-164, 166-169, 171-204, 208-214, 216 and 218-237, have been considered but are moot in view of the new ground(s) of rejection.



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The amendment to all the independent claims necessitated the new ground(s) of rejection discussed above. This office action is non-final.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

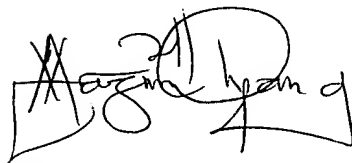
Yurt et al (6,144,702) disclose audio and video transmission and receiving system.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Annan Q. Shang** whose telephone number is **571-272-7355**. The examiner can normally be reached on **700am-400pm**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Christopher S. Kelley** can be reached on **571-272-7331**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the **Electronic Business Center (EBC)** at **866-217-9197 (toll-free)**. If you would like assistance from a **USPTO Customer Service Representative** or access to the automated information system, call **800-786-9199 (IN USA OR CANADA)** or **571-272-1000**.

A handwritten signature in black ink, appearing to read 'Annan Q. Shang', written over a rectangular box.

**Annan Q. Shang**